

REFERENCE TITLE: **contractors; regulations.**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1283

Introduced by
Senator Miranda

AN ACT

AMENDING SECTIONS 20-1095.02, 32-1101, 32-1121, 32-1122, 32-1132, 32-1152, 32-1154 AND 32-1165, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 20-1095.02, Arizona Revised Statutes, is amended to
3 read:
4 20-1095.02. Exemptions; definition
5 A. ~~The provisions of~~ This article, except for section 20-1095.09, ~~do~~
6 DOES not apply to the following:
7 1. Warranties issued by manufacturers or sellers.
8 2. Service contract programs if a motor vehicle manufacturer has
9 financial responsibility for performance.
10 3. Warranties and service contracts issued by a corporation other than
11 a manufacturer or seller in connection with consumer products that are
12 distributed by the corporation if the issuing corporation:
13 (a) Is an affiliate of a consumer products manufacturer.
14 (b) By March 1 of each year submits to the director an independently
15 audited financial statement in which at least one officer of the issuing
16 corporation attests and a certified public accountant certifies that the
17 issuing corporation has and maintains a net worth in excess of one hundred
18 million dollars. Any information, documents and copies that are obtained by
19 or disclosed to the director or any other person pursuant to this subdivision
20 are not available for public inspection, except that the director may use
21 this information in any proceeding relating to this article.
22 4. A service company ~~which~~ THAT issues a service contract to persons
23 other than a consumer.
24 5. A service company ~~which~~ THAT is in the business of selling or
25 servicing any one of the following:
26 (a) Appliances or electronic equipment, or both.
27 (b) Residential heating, cooling or air conditioning systems.
28 (c) Mechanical equipment, other than motor vehicles or their
29 components.
30 6. Any person licensed pursuant to title 32, chapter 10, or not
31 required to be licensed because exempt pursuant to section 32-1121,
32 subsection A, paragraph ~~13~~ 12.
33 B. The director may employ independent examiners pursuant to section
34 20-156 to review and analyze the financial statements that are submitted
35 pursuant to subsection A, paragraph 3 of this section.
36 C. A motor vehicle dealer who is licensed under title 28, chapter 10,
37 who sells a service contract program approved by the director pursuant to
38 section 20-1095.06 and who notifies the director pursuant to section
39 20-1095.07 shall be exempt from the remainder of the requirements of this
40 article.
41 D. For the purposes of this section, "affiliate" means a corporation
42 that is owned or controlled by or is under common control with a
43 manufacturer.

1 Sec. 2. Section 32-1101, Arizona Revised Statutes, is amended to read:

2 32-1101. Definitions

3 A. In this chapter, unless the context otherwise requires:

4 1. "Advertisement" means any written or oral publication,
5 dissemination, solicitation or circulation ~~which~~ THAT is intended to directly
6 or indirectly induce any person to enter into an agreement for contracting
7 services with a contractor, including business cards and telephone directory
8 display advertisements.

9 2. "Commercial contractor" is synonymous with the terms "commercial
10 builder", "industrial builder" and "public works builder" and means any
11 person, firm, partnership, corporation, association or other organization, or
12 any combination, that, for compensation, undertakes to or offers to undertake
13 to, purports to have the capacity to undertake to, submits a bid to, does
14 himself or by or through others, or directly or indirectly supervises others,
15 except within residential property lines, to:

16 (a) Construct, alter, repair, add to, subtract from, improve, move,
17 wreck or demolish any building, highway, road, railroad, excavation or other
18 structure, project, development or improvement, or to do any part thereof,
19 including the erection of scaffolding or any other structure or work in
20 connection with the construction.

21 (b) Connect such structure or improvements to utility service lines
22 and metering devices and the sewer line.

23 (c) Provide mechanical or structural service for any such structure or
24 improvements.

25 3. "COMPENSATION" MEANS PAYMENT IN MONIES, GOODS OR SERVICES FOR WORK
26 PERFORMED AND INCLUDES RENTAL OR SALES RECEIPTS OR ANTICIPATED RENTAL OR
27 SALES RECEIPTS.

28 ~~3-~~ 4. "Contractor" is synonymous with the term "builder" and means
29 any person, firm, partnership, corporation, association or other
30 organization, or ~~a~~ ANY combination of any of them, that, for compensation,
31 undertakes to or offers to undertake to, purports to have the capacity to
32 undertake to, submits a bid or responds to a request for qualification or a
33 request for proposals for construction services to, does himself or by or
34 through others, or directly or indirectly supervises others to:

35 (a) Construct, alter, repair, add to, subtract from, improve, move,
36 wreck or demolish any building, highway, road, railroad, excavation or other
37 structure, project, development or improvement, or to do any part thereof,
38 including the erection of scaffolding or any other structure or work in
39 connection with the construction.

40 (b) Connect such structure or improvements to utility service lines
41 and metering devices and the sewer line.

42 (c) Provide mechanical or structural service for any such structure or
43 improvements.

44 ~~4-~~ 5. "Dual licensed contractor" is synonymous with the term
45 "commercial and residential builder" and means any person, firm, partnership,

1 corporation, association or other organization, or any combination, that, FOR
2 COMPENSATION, undertakes to or offers to undertake to, purports to have the
3 capacity to undertake to, submits a bid to, does himself or by or through
4 others, or directly or indirectly supervises others under a single license on
5 commercial or residential property to:

6 (a) Construct, alter, repair, add to, subtract from, improve, move,
7 wreck or demolish any building, excavation or other structure or improvement,
8 including any appurtenances, or to do any part thereof.

9 (b) Connect such structure or improvements to utility service lines
10 and metering devices and the sewer line.

11 (c) Provide mechanical or structural service for any such structure or
12 improvements.

13 ~~5-~~ 6. "Person" means an applicant, an individual, a member of a
14 limited liability company, a qualifying party, any partner of a partnership
15 or limited liability partnership or any officer, director, qualifying party,
16 trustee of a trust, beneficiary of a trust or owner of at least twenty-five
17 per cent of the stock or beneficial interest of a corporation.

18 ~~6-~~ 7. "Registrar" means the registrar of contractors.

19 ~~7-~~ 8. "Residential contractor" is synonymous with the term
20 "residential builder" and means any person, firm, partnership, corporation,
21 association or other organization, or ~~a-~~ ANY combination of any of them,
22 that, FOR COMPENSATION, undertakes to or offers to undertake to, purports to
23 have the capacity to undertake to, submits a bid to, or does himself or by or
24 through others, within residential property lines:

25 (a) Construct, alter, repair, add to, subtract from, improve, move,
26 wreck or demolish any residential structure, such as houses, townhouses,
27 condominiums or cooperative units. Residential structures also include
28 apartment complexes of four units or less and any appurtenances on or within
29 residential property lines.

30 (b) Connect such residential structure to utility service lines,
31 metering devices or sewer lines.

32 (c) Provide mechanical or structural service for any such residential
33 structure.

34 B. "Contractor" includes subcontractors, specialty contractors, floor
35 covering contractors, landscape contractors, other than gardeners, and
36 consultants representing themselves as having the ability to supervise or
37 manage a construction project for the benefit of the property owner including
38 the hiring and firing of specialty contractors, the scheduling of work on the
39 project and the selection and purchasing of construction material.

40 C. For the purposes of this chapter, ~~"residential contractor"~~ does
41 not include an owner making improvements pursuant to section 32-1121,
42 subsection A, paragraph ~~5-~~ 4.

43 D. Only contractors as defined in this section are licensed and
44 regulated by this chapter.

1 Sec. 3. Section 32-1121, Arizona Revised Statutes, is amended to read:

2 32-1121. Persons not required to be licensed; penalties

3 A. This chapter shall not be construed to apply to:

4 1. An authorized representative of the United States government, this
5 state or any county, incorporated city or town, reclamation district,
6 irrigation district or other municipality or political subdivision of this
7 state.

8 ~~2. Trustees of an express trust that is not formed for the purpose of~~
9 ~~conducting business as a contractor or officers of a court, if they are~~
10 ~~acting within the terms of their trust or office.~~

11 ~~3.~~ 2. Public utilities operating under regulation of the corporation
12 commission or construction, repair or operation incidental to discovering or
13 producing petroleum or gas, or the drilling, testing, abandoning or other
14 operation of a petroleum or gas well, if performed by an owner or lessee.

15 ~~4.~~ 3. Any materialman, manufacturer or retailer ~~furnishing~~ WHO
16 FURNISHES finished products, materials or articles of merchandise AND who
17 ~~does not install or attach such items or installs or~~ attaches such items if
18 the total value of the sales contract or transaction involving such items and
19 the cost of the installation or attachment of such items to a structure does
20 not exceed one thousand dollars, including labor, materials and all other
21 items, but excluding any electrical fixture or appliance that was designed by
22 the manufacturer, that is unaltered, unchanged or unmodified by any person,
23 that can be plugged into a common household electrical outlet utilizing a two
24 pronged or three pronged electrical connector and that does not use any other
25 form of energy, including natural gas, propane or other petroleum or gaseous
26 fuel, to operate or is attached by a nail, screw or other fastening device to
27 the frame or foundation of any residential structure. The materialman,
28 manufacturer or retailer shall inform the purchaser that the installation may
29 also be performed by a licensed contractor whose name and address the
30 purchaser may request.

31 ~~5.~~ 4. Owners of property who improve such property or who build or
32 improve structures or appurtenances on such property and who do the work
33 themselves, with their own employees or with duly licensed contractors, if
34 the structure, group of structures or appurtenances, including the
35 improvements thereto, are intended for occupancy solely by the owner and are
36 not intended for occupancy by members of the public as the owner's employees
37 or business visitors and the structures or appurtenances are not intended for
38 sale or for rent. In all actions brought under this chapter, proof of the
39 sale or rent or the offering for sale or rent of any such structure by the
40 owner-builder within one year after completion or issuance of a certificate
41 of occupancy is prima facie evidence that such project was undertaken for the
42 purpose of sale or rent. For the purposes of this paragraph, "sale" or
43 "rent" includes any arrangement by which the owner receives compensation in
44 money, provisions, chattels or labor from the occupancy or the transfer of
45 the property or the structures on the property.

1 ~~6-~~ 5. Owners of property who are acting as developers and who build
2 structures or appurtenances to structures on their property for the purpose
3 of sale or rent and who contract for such a project with a general contractor
4 licensed pursuant to this chapter and owners of property who are acting as
5 developers, who improve structures or appurtenances to structures on their
6 property for the purpose of sale or rent and who contract for such a project
7 with a general contractor or specialty contractors licensed pursuant to this
8 chapter. To qualify for the exemption under this paragraph, the licensed
9 contractors' names and license numbers shall be included in all sales
10 documents.

11 ~~7-~~ 6. Architects or engineers who are engaging in their professional
12 practice as defined in chapter 1 of this title and who hire or offer to hire
13 the services of a contractor for preconstruction activities relating to
14 investigation and discovery including:

15 (a) Subsurface utility location and designation services.

16 (b) Potholing.

17 (c) Drilling for any of the following:

18 (i) Soil samples.

19 (ii) Rock samples.

20 (iii) Pavement samples.

21 (d) Locating existing features of a building or structure including
22 existing electrical, mechanical, plumbing and structural members.

23 ~~8-~~ 7. A person licensed, certified or registered pursuant to chapter
24 22 of this title or a person working under the direct supervision of a person
25 certified or qualified pursuant to chapter 22 of this title to the extent the
26 person is engaged in structural pest control.

27 ~~9-~~ 8. The sale or installation of finished products, materials or
28 articles of merchandise ~~which~~ THAT are not fabricated into and do not become
29 a permanent fixed part of the structure. This exemption does not apply if a
30 local building permit is required, if the total price of the finished
31 product, material or article of merchandise, including labor but excluding
32 any electrical fixture or appliance that was designed by the manufacturer,
33 that is unaltered, unchanged or unmodified by any person, that can be plugged
34 into a common household electrical outlet utilizing a two pronged or three
35 pronged electrical connector and that does not use any other form of energy,
36 including natural gas, propane or other petroleum or gaseous fuel, to operate
37 or is attached by a nail, screw or other fastening device to the frame or
38 foundation of any residential structure, is more than one thousand dollars or
39 if the removal of the finished product, material or article of merchandise
40 causes damage to the structure or renders the structure unfit for its
41 intended use.

42 ~~10-~~ 9. Employees of the owners of condominiums, townhouses,
43 cooperative units or apartment complexes of four units or less or the owners'
44 management agent or employees of the management agent repairing or
45 maintaining structures owned by them.

1 ~~11.~~ 10. Any person who engages in the activities regulated by this
2 chapter, as an employee of an exempt property owner or as an employee with
3 wages as the person's sole compensation.

4 ~~12.~~ 11. A surety company or companies ~~which~~ THAT are authorized to
5 transact business in this state and ~~which~~ THAT undertake to complete a
6 contract on which they issued a performance or completion bond, provided all
7 construction work is performed by duly licensed contractors.

8 ~~13.~~ 12. Insurance companies ~~which~~ THAT are authorized to transact
9 business in this state and ~~which~~ THAT undertake to perform repairs resulting
10 from casualty losses pursuant to the provisions of a policy, provided all
11 construction work is performed by duly licensed contractors.

12 ~~14.~~ 13. Any person other than a licensed contractor engaging in any
13 work or operation on one undertaking or project by one or more contracts, for
14 which the aggregate contract price, including labor, materials and all other
15 items, but excluding any electrical fixture or appliance that was designed by
16 the manufacturer, that is unaltered, unchanged or unmodified by any person,
17 that can be plugged into a common household electrical outlet utilizing a two
18 pronged or three pronged electrical connector and that does not use any other
19 form of energy, including natural gas, propane or other petroleum or gaseous
20 fuel, to operate or is attached by a nail, screw or other fastening device to
21 the frame or foundation of any residential structure, is less than one
22 thousand dollars. The work or operations ~~which~~ THAT are exempt under this
23 paragraph shall be of a casual or minor nature. This exemption does not
24 apply:

25 (a) In any case in which the performance of the work requires a local
26 building permit.

27 (b) In any case in which the work or construction is only a part of a
28 larger or major operation, whether undertaken by the same or a different
29 contractor, or in which a division of the operation is made in contracts of
30 amounts less than one thousand dollars, excluding any electrical fixture or
31 appliance that was designed by the manufacturer, that is unaltered, unchanged
32 or unmodified by any person, that can be plugged into a common household
33 electrical outlet utilizing a two pronged or three pronged electrical
34 connector and that does not use any other form of energy, including natural
35 gas, propane or other petroleum or gaseous fuel, to operate or is attached by
36 a nail, screw or other fastening device to the frame or foundation of any
37 residential structure, for the purpose of evasion of this chapter or
38 otherwise.

39 (c) To a person who utilizes any form of advertising to the public in
40 which the person's unlicensed status is not disclosed by including the words
41 "not a licensed contractor" in the advertisement.

42 ~~15.~~ 14. A person who is licensed, certified or registered pursuant to
43 title 41, chapter 16 and who is not otherwise required to be licensed under
44 this chapter or an employee of such person.

1 ~~16-~~ 15. A person who functions as a gardener by performing lawn,
2 garden, shrub and tree maintenance.

3 B. A person who is licensed to perform work in a particular trade
4 pursuant to this chapter shall not be required to obtain and maintain a
5 separate license for mechanical or structural service work performed within
6 the scope of such trade by such person.

7 C. Any person who does not have an exemption from licensure pursuant
8 to subsection A, paragraph ~~14~~ 13, subdivision (c) of this section is subject
9 to prosecution for a violation of section 44-1522. The attorney general may
10 investigate the act or practice and take appropriate action pursuant to title
11 44, chapter 10, article 7.

12 Sec. 4. Section 32-1122, Arizona Revised Statutes, is amended to read:
13 32-1122. Qualifications for license

14 A. A contractor's license shall be issued only by act of the registrar
15 of contractors. The registrar shall:

16 1. Classify and qualify applicants for a license.

17 2. If necessary, change the license classification of a licensee in
18 the case of a title reclassification, with or without a bond rider for the
19 purpose of continuing liability on the bond.

20 3. Conduct investigations the registrar deems necessary.

21 4. Establish written examinations if deemed necessary to protect the
22 health and safety of the public.

23 B. To obtain or renew a license under this chapter, the applicant
24 shall:

25 1. Submit to the registrar of contractors a verified application on
26 forms that are prescribed by the registrar of contractors and that contain
27 the following information and shall advise the registrar of any change in the
28 information within thirty days:

29 (a) A designation of the classification of license that is sought by
30 the applicant.

31 (b) If the applicant is an individual, the applicant's name and
32 address.

33 (c) If the applicant is a partnership, the names and addresses of all
34 partners with a designation of any limited partners.

35 (d) If the applicant is a corporation, an association or any other
36 organization, the names and addresses of the president, vice-president, if
37 any, secretary and treasurer or the names and addresses of the functional
38 equivalent of these officers, the directors and the owners of twenty-five per
39 cent or more of the stock or beneficial interest.

40 (e) The name and address of the qualifying party.

41 (f) If the applicant is a corporation, evidence that the corporation
42 is in good standing with the corporation commission.

43 (g) The address or location of the applicant's place of business and
44 the mailing address if it is different from the applicant's place of
45 business.

1 (h) The applicant's current privilege license number issued pursuant
2 to section 42-5005.

3 (i) Proof that the applicant has complied with the statutes or rules
4 governing workers' compensation insurance.

5 2. Submit the appropriate bond and fee required under this chapter.

6 C. To obtain a contractor's license under this chapter other than a
7 residential contractor's license, the applicant shall submit a detailed
8 statement of current financial condition containing information required by
9 the registrar of contractors on a form furnished by or acceptable to the
10 registrar of contractors. Notwithstanding any other law, a swimming pool
11 contractor shall also submit a detailed statement of current financial
12 condition as required by this subsection.

13 D. To obtain, ~~HOLD~~ or renew a license under this chapter, each person
14 shall be of good character and reputation. Lack of good character and
15 reputation may be established by showing that a person has engaged in
16 contracting without a license or committed any act that, if committed or done
17 by any licensed contractor, would be grounds for suspension or revocation of
18 a contractor's license or by showing that the person was named on a
19 contractor's license that was suspended or revoked in another state.

20 E. To obtain a license under this chapter, a person shall not have had
21 a license refused or revoked, within one year before the person's
22 application, or shall not have engaged in the contracting business, nor shall
23 the person have submitted a bid without first having been licensed within one
24 year before the person's application, nor shall a person act as a contractor
25 between the filing of the application and actual issuance of the license.
26 The registrar may find any of those actions or circumstances to be excusable
27 if there was reasonable doubt as to the need for licensure or the actions of
28 the applicant did not result in an unremedied hardship or danger or loss to
29 the public. A person who has been convicted of contracting without a license
30 is not eligible to obtain a license under this chapter for one year after the
31 date of the last conviction.

32 F. Before a license is issued, the qualifying party shall:

33 1. Have had a minimum of ~~four~~ SIX years' practical or management trade
34 experience, at least ~~two~~ THREE of which must have been within the last ten
35 years, dealing specifically with the type of construction, or its equivalent,
36 for which the applicant is applying for a license. Technical training in an
37 accredited college or university or in a manufacturer's accredited training
38 program may be substituted for a portion of such experience, but in no case
39 may credited technical training exceed two years of the required ~~four~~ SIX
40 years' experience. The registrar of contractors may reduce the ~~four~~ SIX
41 years' practical or management experience requirement if in the registrar's
42 opinion it has been conclusively shown by custom and usage in the particular
43 industry or craft involved that the ~~four~~ SIX year requirement is excessive.
44 The registrar may waive the work experience documentation and verification or
45 the examination requirement if the records reflect that the qualifying party

1 is currently or has previously been a qualifying party for a licensee in this
2 state in the same classification within the preceding five years.

3 2. Successfully show, by written examination taken not more than two
4 years before application, if required, qualification in the kind of work for
5 which the applicant proposes to contract, the applicant's general knowledge
6 of the building, safety, health and lien laws of the state, administrative
7 principles of the contracting business and the rules adopted by the registrar
8 of contractors pursuant to this chapter, demonstrate knowledge and
9 understanding of construction plans and specifications applicable to the
10 particular industry or craft and of the standards of construction work and
11 techniques and practices in the particular industry or craft and demonstrate
12 a general understanding of other related construction trades, in addition to
13 any other matters as may be deemed appropriate by the registrar to determine
14 that the qualifying party meets the requirements of this chapter. The
15 registrar shall maintain multiple versions of examinations for each type of
16 license that requires an examination.

17 G. No license shall be issued to a minor, to any partnership in which
18 one of the partners is a minor or to any corporation in which a corporate
19 officer is a minor.

20 H. Before receiving, renewing and holding a license pursuant to this
21 chapter, the registrar may require a license applicant or licensee to submit
22 to the registrar a full set of fingerprints and the fees required in section
23 41-1750. The registrar shall submit the fingerprints and fees to the
24 department of public safety for the purpose of obtaining a state and federal
25 criminal records check pursuant to section 41-1750 and Public Law 92-544.
26 The department of public safety may exchange this fingerprint data with the
27 federal bureau of investigation.

28 Sec. 5. Section 32-1132, Arizona Revised Statutes, is amended to read:
29 32-1132. Residential contractors' recovery fund

30 A. The residential contractors' recovery fund is established, to be
31 administered by the registrar, from which any person injured by an act,
32 representation, transaction or conduct of a residential contractor licensed
33 pursuant to this chapter that is in violation of this chapter or the rules
34 adopted pursuant to this chapter may be awarded in the county where the
35 violation occurred an amount of not more than thirty thousand dollars for
36 damages sustained by the act, representation, transaction or conduct. An
37 award from the fund is limited to the actual damages suffered by the claimant
38 as a direct result of the contractor's violation but shall not exceed an
39 amount necessary to complete or repair a residential structure or
40 appurtenance within residential property lines. Actual damages shall not be
41 established by bids supplied by or the value of work performed by a person or
42 entity that is not licensed pursuant to this chapter and that is required to
43 be licensed pursuant to this chapter. If the claimant has paid a deposit or
44 down payment and no actual work is performed or materials are delivered, the
45 award of actual damages shall not exceed the exact dollar amount of the

1 deposit or down payment plus interest at the rate of ten per cent a year from
2 the date the deposit or down payment is made or not more than thirty thousand
3 dollars, whichever is less. Interest shall not be paid from the fund on any
4 other awards under this chapter unless ordered by a court of competent
5 jurisdiction. An award from the fund shall not be available to persons
6 injured by an act, representation, transaction or conduct of a residential
7 contractor who was not licensed pursuant to this chapter or whose license was
8 in an inactive status, expired, cancelled, revoked, suspended or not issued
9 at the time of the contract. No more than the maximum individual award from
10 the fund shall be made on any individual residence or to any injured person.
11 Notwithstanding any other provision of law, monies in the residential
12 contractors' recovery fund shall not be directly awarded for attorney fees or
13 costs except in contested cases appealed to the superior court.

14 **B. ANY PERSON RECEIVING AN AWARD FROM THE FUND UNDER THIS ARTICLE IS**
15 **DEEMED TO HAVE ASSIGNED TO THE REGISTRAR THE PERSON'S RIGHTS FOR RECOVERY**
16 **AGAINST THE RESPONSIBLE RESIDENTIAL CONTRACTOR LICENSED PURSUANT TO THIS**
17 **CHAPTER TO THE EXTENT OF THE PERSON'S AWARD FROM THE FUND.**

18 ~~B-~~ C. Except as provided in section 32-1152, subsection C, every
19 person making application for a contractor's license or for renewal of a
20 contractor's license to engage in residential contracting shall pay an
21 assessment of not more than six hundred dollars during the biennial license
22 period for deposit in the fund. In the event that the registrar does not
23 issue the license, this assessment shall be returned to the applicant.

24 Sec. 6. Section 32-1152, Arizona Revised Statutes, is amended to read:
25 **32-1152. Bonds**

26 A. Before granting an original contractor's license, the registrar
27 shall require of the applicant a surety bond in a form acceptable to the
28 registrar or a cash deposit as provided in this section. **AT THE TIME OF**
29 **FILING AN ORIGINAL APPLICATION, THE APPLICANT SHALL PROVIDE TO THE REGISTRAR**
30 **AN ESTIMATE OF THE APPLICANT'S VOLUME OF WORK FOR EACH OF THE TWO ENSUING**
31 **TWELVE MONTH PERIODS AND THE BASIS ON WHICH THE ESTIMATE WAS DETERMINED.** No
32 contractor's license may be renewed unless the applicant's surety bond or
33 cash deposit is in full force and effect. **AT THE TIME OF FILING A RENEWAL**
34 **APPLICATION, THE APPLICANT SHALL PROVIDE TO THE REGISTRAR AN ESTIMATE OF THE**
35 **APPLICANT'S VOLUME OF WORK FOR EACH OF THE TWO ENSUING TWELVE MONTH PERIODS,**
36 **NEITHER OF WHICH SHALL BE LESS THAN THE AVERAGE OF THE APPLICANT'S ACTUAL**
37 **VOLUME OF WORK FOR THE PRECEDING TWO TWELVE MONTH PERIODS UNLESS THE**
38 **APPLICANT ALSO FILES AN EXPLANATION ACCEPTABLE TO THE REGISTRAR FOR THE**
39 **LESSER AMOUNTS. AN ESTIMATE OF AN APPLICANT'S VOLUME OF WORK IS NOT REQUIRED**
40 **IF THE MAXIMUM BOND AMOUNT THAT IS SET BY RULE ADOPTED BY THE REGISTRAR IS**
41 **PROVIDED AT THE TIME OF ORIGINAL LICENSE APPLICATION OR RENEWAL.**

42 B. The bonds, or the cash deposit as provided in this section, shall
43 be in the name of the licensee in amounts fixed by the registrar with the
44 following schedules after giving due consideration to the **ESTIMATES OF THE**

1 volume of work AS PRESCRIBED IN SUBSECTION A and the classification
2 contemplated by the applicant:

3 1. General commercial building contractors and subclassifications of
4 general commercial contractors shall furnish a surety bond or cash deposit in
5 an amount ~~which~~ THAT shall be determined as follows:

6 (a) If the estimated annual volume of construction work of the
7 applicant is ten million dollars or more, the applicant shall furnish a
8 surety bond or cash deposit of not less than fifty thousand dollars or more
9 than ~~one~~ TWO hundred thousand dollars.

10 (b) If the estimated annual volume of construction work of the
11 applicant is more than five million dollars and less than ten million
12 dollars, the applicant shall furnish a surety bond or cash deposit of not
13 less than thirty-five thousand dollars or more than ~~seventy-five~~ ONE HUNDRED
14 FIFTY thousand dollars.

15 (c) If the estimated annual volume of construction work of the
16 applicant is more than one million dollars and less than five million
17 dollars, the applicant shall furnish a surety bond or cash deposit of not
18 less than fifteen thousand dollars or more than ~~fifty~~ ONE HUNDRED thousand
19 dollars.

20 (d) If the estimated annual volume of construction work of the
21 applicant is more than five hundred thousand dollars and less than one
22 million dollars, the applicant shall furnish a surety bond or cash deposit of
23 not less than ten thousand dollars or more than ~~twenty-five~~ FIFTY thousand
24 dollars.

25 (e) If the estimated annual volume of construction work of the
26 applicant is more than one hundred fifty thousand dollars and less than five
27 hundred thousand dollars, the applicant shall furnish a surety bond or cash
28 deposit of not less than five thousand dollars or more than ~~fifteen~~ THIRTY
29 thousand dollars.

30 (f) If the estimated annual volume of construction work of the
31 applicant is less than one hundred fifty thousand dollars, the applicant
32 shall furnish a surety bond or cash deposit of ~~five~~ TEN thousand dollars.

33 2. Specialty commercial contractors shall furnish a surety bond or
34 cash deposit in an amount ~~which~~ THAT shall be determined as follows:

35 (a) If the estimated annual volume of construction work of the
36 applicant is ten million dollars or more, the applicant shall furnish a
37 surety bond or cash deposit of not less than thirty-seven thousand five
38 hundred dollars or more than ~~fifty~~ ONE HUNDRED thousand dollars.

39 (b) If the estimated annual volume of construction work of the
40 applicant is more than five million dollars and less than ten million
41 dollars, the applicant shall furnish a surety bond or cash deposit of not
42 less than seventeen thousand five hundred dollars or more than ~~thirty-seven~~
43 SEVENTY-FIVE thousand ~~five hundred~~ dollars.

44 (c) If the estimated annual volume of construction work of the
45 applicant is more than one million dollars and less than five million

1 dollars, the applicant shall furnish a surety bond or cash deposit of not
2 less than seven thousand five hundred dollars or more than ~~twenty-five~~ FIFTY
3 thousand dollars.

4 (d) If the estimated annual volume of construction work of the
5 applicant is more than five hundred thousand dollars and less than one
6 million dollars, the applicant shall furnish a surety bond or cash deposit of
7 not less than five thousand dollars or more than ~~seventeen~~ THIRTY-FIVE
8 thousand ~~five hundred~~ dollars.

9 (e) If the estimated annual volume of construction work of the
10 applicant is more than one hundred fifty thousand dollars and less than five
11 hundred thousand dollars, the applicant shall furnish a surety bond or cash
12 deposit of not less than two thousand five hundred dollars or more than ~~seven~~
13 FIFTEEN thousand ~~five hundred~~ dollars.

14 (f) If the estimated annual volume of construction work of the
15 applicant is less than one hundred fifty thousand dollars, the applicant
16 shall furnish a surety bond or cash deposit of ~~two~~ FIVE thousand ~~five hundred~~
17 dollars.

18 3. The total amount of the surety bond or cash deposit required of a
19 licensee who holds more than one license under paragraphs 1 and 2 of this
20 subsection shall be the sum of the surety bond or cash deposit required for
21 each license based on the estimated annual volume of construction work of the
22 applicant allocated to and performed under each license. The applicant at
23 ~~his~~ THE APPLICANT'S option may post a single surety bond or cash deposit,
24 which shall be the sum of the bonds or deposits determined under this
25 subsection for all such licenses.

26 4. General dual licensed contractors and subclassifications of general
27 dual licensed contractors shall furnish a single surety bond or cash deposit
28 with amounts for each classification of license that are determined based on
29 the volume of commercial work as determined under paragraph 1 of this
30 subsection and the volume of residential work as determined under paragraph 5
31 of this subsection. Liability under the bond or cash deposit shall be
32 limited to the amount established for each commercial or residential license
33 and is subject to the limitations and requirements set forth in subsection E
34 of this section.

35 5. General residential contractors and subclassifications of general
36 residential contractors shall furnish a surety bond or cash deposit in an
37 amount of not more than ~~fifteen~~ THIRTY thousand dollars and not less than
38 five thousand dollars.

39 6. Specialty dual licensed contractors shall furnish a single surety
40 bond or cash deposit with amounts for each classification of license that are
41 determined based on the volume of commercial work as determined under
42 paragraph 2 of this subsection and the volume of residential work as
43 determined under paragraph 7 of this subsection. Liability under the bond or
44 cash deposit shall be limited to the amount established for each commercial

1 or residential license and is subject to the limitations and requirements set
2 forth in subsection E of this section.

3 7. Specialty residential contractors shall furnish a surety bond or
4 cash deposit in an amount of not more than ~~seven~~ FIFTEEN thousand ~~five~~
5 ~~hundred~~ dollars and not less than one thousand dollars.

6 8. Dual licensed swimming pool contractors and residential swimming
7 pool general contractors shall furnish a surety bond or cash deposit in the
8 same amounts based on the volume of work as determined under paragraph 1 of
9 this subsection for a general commercial contractor.

10 C. Dual licensed contractors and residential contractors shall also
11 either:

12 1. Furnish an additional surety bond or cash deposit in the amount of
13 two hundred thousand dollars solely for actual damages suffered by persons
14 injured as described in section 32-1131. This bond shall be subject to the
15 limitations on the amounts that may be awarded to individual claimants as
16 established in section 32-1132.

17 2. Participate in the residential contractors' recovery fund and pay
18 the assessment prescribed by section 32-1132.

19 D. The surety bonds shall be executed by the contractor as principal
20 with a corporation duly authorized to transact surety business in this state.
21 Evidence of a surety bond shall be submitted to the registrar in a form
22 acceptable to the registrar. The contractor may in the alternative establish
23 a cash deposit in the amount of the bond with the state treasurer in
24 accordance with rules adopted by the registrar. Such cash bond monies shall
25 be deposited, pursuant to sections 35-146 and 35-147, in the contractors'
26 cash bond fund. The state treasurer shall invest and divest monies in the
27 fund as provided by section 35-313, and monies earned from investment shall
28 be credited to the state general fund. Such cash deposits may be withdrawn,
29 if there are no outstanding claims against them, two years after the
30 termination of the license in connection with which the cash is deposited.
31 The cash deposit may be withdrawn two years after the filing of a commercial
32 surety bond as a replacement to the cash deposit.

33 E. The bonds or deposit required by subsection B of this section shall
34 be for the benefit of and shall be subject to claims by the registrar of
35 contractors for failure to pay any sum required pursuant to this chapter.
36 The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this
37 section is for the benefit of and subject to claims by a licensee under this
38 chapter or a lessee, owner or co-owner of nonresidential real property
39 including, but not limited to, a tenant in common or joint tenant, or their
40 successors in interest, who has a direct contract with the licensee against
41 whose bond or deposit the claim is made and who is damaged by the failure of
42 the licensee to build or improve a structure or appurtenance on that real
43 property at the time the work was performed in a manner not in compliance
44 with the requirements of any building or construction code applicable to the
45 construction work under the laws of this state or any political subdivision,

1 or if no such code was applicable, in accordance with the standards of
2 construction work approved by the registrar. The residential bond or deposit
3 required by subsection B, paragraphs 4 through 8 of this section is for the
4 benefit of and subject to claims by any person furnishing labor, materials or
5 construction equipment on a rental basis used in the direct performance of a
6 construction contract involving a residential structure or by persons injured
7 as defined in section 32-1131. The bond or deposit required by subsection C,
8 paragraph 1 of this section is for the benefit of and is subject to claims
9 only by persons injured as described in section 32-1131. The person seeking
10 recovery from the bond or cash deposit shall maintain an action at law
11 against the contractor if claiming against the cash deposit or against the
12 contractor and surety if claiming against the surety bond. If the person
13 seeking recovery is required to give the notice pursuant to section
14 33-992.01, ~~he~~ THE PERSON is entitled to seek recovery only if ~~he~~ THE PERSON
15 has given such notice and has made proof of service. The surety bond or cash
16 deposit shall be subject to claims until the full amount thereof is
17 exhausted. The court may award reasonable ~~attorney's~~ ATTORNEY fees in a
18 judgment against a contractor's surety bond or cash deposit. No suit may be
19 commenced on the bond or for satisfaction from the cash deposit after the
20 expiration of two years following the commission of the act or delivery of
21 goods or rendering of services on which the suit is based, except that time
22 for purposes of claims for fraud shall be measured as provided in section
23 12-543. The surety bond or cash deposit shall be continuous in form and
24 shall be conditioned so that the total aggregate liability of the surety or
25 cash deposit for all claims, including reasonable ~~attorney's~~ ATTORNEY fees,
26 shall be limited to the face amount of the surety bond or cash deposit
27 irrespective of the number of years the bond or cash deposit is in force. If
28 the corporate surety desires to make payment without awaiting court action,
29 the amount of any bond filed in compliance with this chapter shall be reduced
30 to the extent of any payment or payments made by the corporate surety in good
31 faith thereunder. Any such payments shall be based on priority of written
32 claims received by the corporate surety prior to court action. If more than
33 one cash deposit exists, the judgment against the contractor shall state
34 which cash deposit shall be used to satisfy the judgment. A certified copy
35 of the judgment shall then be filed with the registrar, and such judgment
36 shall specify that it may be satisfied from the contractor's cash deposit.
37 Priority for payment shall be based upon the time of filing with the
38 registrar. Upon receipt of a certified copy of the judgment, the registrar
39 may authorize payment from the cash deposit of the amount claimed or of
40 whatever lesser amount remains on file. In any action against a cash
41 deposit, the claimant, at the time of filing suit, may notify the registrar
42 in writing of the action against the cash deposit, but shall not name as a
43 defendant in the action the registrar, the treasurer, ~~or~~ or the state. Failure
44 to so notify the registrar at the time of filing suit may result in the cash

1 deposit being withdrawn by the licensee ~~prior to~~ BEFORE judgment pursuant to
2 subsection D of this section.

3 F. When a corporate surety cancels a bond, the surety shall not less
4 than thirty days ~~prior to~~ BEFORE the effective date of the cancellation give
5 the principal and the registrar a written notice of the cancellation. Notice
6 to the principal shall be by certified mail in a sealed envelope with postage
7 fully prepaid. Proof of notice to the principal shall be made available to
8 the registrar on request. On reduction or depletion of the cash deposit, the
9 registrar shall immediately notify the licensee of ~~said~~ THE reduction or
10 depletion and that the licensee must replenish the cash deposit or furnish a
11 surety bond on or before thirty days from the date of ~~said~~ THE reduction or
12 depletion or the contractor's license shall be suspended on the thirtieth day
13 without further notice or hearing. Notice to the contractor shall be by
14 certified mail in a sealed envelope with postage fully prepaid ~~thereon~~,
15 addressed to the contractor's latest address of record in the registrar's
16 office. The contractor's license shall be suspended by operation of law on
17 the date the bond is canceled or thirty days from the date of reduction or
18 depletion of the cash deposit unless a replacement bond or cash deposit is on
19 file with the registrar.

20 G. The registrar and the state treasurer shall have no personal
21 liability for the performance of duties relating to the bonds, cash deposits,
22 certificates of deposit, investment certificates or share accounts required
23 or permitted by this chapter as long as such duties are performed in good
24 faith.

25 H. In the following instances the registrar, after a hearing, may
26 require, as a condition precedent to issuance, renewal, continuation or
27 removal of suspension of a license, a surety bond or cash deposit in an
28 amount and duration to be fixed by the registrar based upon the seriousness
29 of the violations, which shall be not more than ten times the amount required
30 by subsection B of this section:

31 1. When a license of either the applicant or the qualifying party has
32 been suspended or revoked or a surety bond or cash deposit requirement has
33 been increased under section 32-1154 previously as the result of disciplinary
34 action for a violation of this chapter.

35 2. When either the applicant or qualifying party was an officer,
36 member, partner or qualifying party for a licensee at any time during which
37 cause for disciplinary action occurred resulting in suspension or revocation
38 of such licensee's license and such applicant or qualifying party had
39 knowledge of or participated in the act or omission ~~which~~ THAT was the cause
40 of such disciplinary action for a violation of this chapter.

41 3. The bonds required by this subsection shall be in addition to any
42 other bond or cash deposit required by this chapter or any other bond
43 required of a contractor by an owner or any other contracting party on any
44 contract undertaken by ~~him~~ THE CONTRACTOR pursuant to the authority of such
45 license.

1 Sec. 7. Section 32-1154, Arizona Revised Statutes, is amended to read:

2 32-1154. Grounds for suspension or revocation of license:
3 continuing jurisdiction; civil penalty; recovery
4 fund award

5 A. The holder of a license or any person listed on a license pursuant
6 to this chapter shall not commit any of the following acts or omissions:

7 1. Abandonment of a contract or refusal to perform after submitting a
8 bid on work without legal excuse for the abandonment or refusal.

9 2. Departure from or disregard of plans or specifications or any
10 building codes of the state or any political subdivision of the state in any
11 material respect ~~which~~ THAT is prejudicial to another without consent of the
12 owner or the owner's duly authorized representative and without the consent
13 of the person entitled to have the particular construction project or
14 operation completed in accordance with such plans and specifications and
15 code.

16 3. Violation of any rule adopted by the registrar.

17 4. Failure to comply with the statutes or rules governing social
18 security, workers' compensation or unemployment insurance.

19 5. Failure to pay income taxes, withholding taxes or any tax imposed
20 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the
21 licensed business.

22 6. Misrepresentation of a material fact by the applicant in obtaining
23 a license.

24 7. The doing of a wrongful or fraudulent act by the licensee as a
25 contractor resulting in another person being substantially injured.

26 8. Conviction of a felony.

27 9. Failure in a material respect by the licensee to complete a
28 construction project or operation for the price stated in the contract, or in
29 any modification of the contract.

30 10. Aiding or abetting a licensed or unlicensed person to evade this
31 chapter, knowingly or recklessly combining or conspiring with a licensed or
32 unlicensed person, allowing one's license to be used by a licensed or
33 unlicensed person or acting as agent, partner, associate or otherwise of a
34 licensed or unlicensed person with intent to evade this chapter.

35 11. Failure by a licensee or agent or official of a licensee to pay
36 monies in excess of seven hundred fifty dollars when due for materials or
37 services rendered in connection with the licensee's operations as a
38 contractor when the licensee has the capacity to pay or, if the licensee
39 lacks the capacity to pay, when the licensee has received sufficient monies
40 as payment for the particular construction work project or operation for
41 which the services or materials were rendered or purchased.

42 12. Failure of a contractor to comply with any safety or labor laws or
43 codes of the federal government, state or political subdivisions of the
44 state.

45 13. Failure in any material respect to comply with this chapter.

1 14. Knowingly entering into a contract with a contractor for work to be
2 performed for which a license is required with a person not duly licensed in
3 the required classification.

4 15. Acting in the capacity of a contractor under any license issued
5 under this chapter in a name other than as set forth upon the license.

6 16. False, misleading or deceptive advertising whereby any member of
7 the public may be misled and injured.

8 17. Knowingly contracting beyond the scope of the license or licenses
9 of the licensee.

10 18. Contracting or offering to contract or submitting a bid while the
11 license is under suspension or while the license is on inactive status.

12 19. Failure to notify the registrar in writing within a period of
13 fifteen days of any disassociation of the person who qualified for the
14 license. Such licensee shall have sixty days from the date of such
15 disassociation to qualify through another person.

16 20. Subsequent discovery of facts which if known at the time of
17 issuance of a license or the renewal of a license would have been grounds to
18 deny the issuance or renewal of a license.

19 21. Having a person named on the license who is named on any other
20 license in this state or in another state which is under suspension or
21 revocation unless the prior revocation was based solely on a violation of
22 this paragraph.

23 22. Continuing a new single family residential construction project
24 with actual knowledge that a pretreatment wood-destroying pests or organisms
25 application was either:

26 (a) Not performed at the required location.

27 (b) Performed in a manner inconsistent with label requirements, state
28 law or rules.

29 23. Failure to take appropriate corrective action to comply with this
30 chapter or with rules adopted pursuant to this chapter without valid
31 justification within a reasonable period of time after receiving a written
32 directive from the registrar. The written directive shall set forth the time
33 within which the contractor is to complete the remedial action. The time
34 permitted for compliance shall not be less than fifteen days from the date of
35 issuance of the directive. A license shall not be revoked or suspended nor
36 shall any other penalty be imposed for a violation of this paragraph until
37 after a hearing has been held.

38 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
39 otherwise intimidate any contractor or materialman from serving a preliminary
40 notice pursuant to section 33-992.01.

41 B. The registrar may on the registrar's own motion, and shall on the
42 written complaint of any person, investigate the acts of any contractor
43 within this state and may temporarily suspend, with or without imposition of
44 specific conditions in addition to increased surety bond or cash deposit
45 requirements, or permanently revoke any or all licenses issued under this

1 chapter if the holder of the license issued pursuant to this chapter is
2 guilty of or commits any of the acts or omissions set forth in subsection A
3 of this section.

4 C. The expiration, cancellation, suspension or revocation of a license
5 by operation of law or by decision and order of the registrar or a court of
6 law or the voluntary surrender of a license by a licensee shall not deprive
7 the registrar of jurisdiction to proceed with any investigation of or action
8 or disciplinary proceeding against such licensee, or to render a decision
9 suspending or revoking such a license, or denying the renewal or right of
10 renewal of such license.

11 D. The registrar may impose a civil penalty of not to exceed five
12 hundred dollars on a contractor for each violation of subsection A, paragraph
13 23 of this section. Civil penalties collected pursuant to this subsection
14 shall be deposited in the residential contractors' recovery fund. The
15 failure by the licensee to pay any civil penalty imposed under this
16 subsection results in the automatic revocation of the license thirty days
17 after the effective date of the order providing for the civil penalty. No
18 future license may be issued to an entity consisting of a person associated
19 with the contractor, as defined in section 32-1101, subsection A, paragraph
20 ~~5- 6~~, unless payment of any outstanding civil penalty is tendered.

21 E. The registrar shall impose a civil penalty of not to exceed one
22 thousand dollars on a contractor for each violation of subsection A,
23 paragraph 18 of this section. Civil penalties collected pursuant to this
24 subsection shall be deposited in the residential contractors' recovery fund.
25 The failure by the licensee to pay any civil penalty imposed under this
26 subsection results in the automatic permanent revocation of the license
27 thirty days after the effective date of the order providing for the civil
28 penalty. No future license may be issued to an entity consisting of a person
29 associated with the contractor, as defined in section 32-1101, subsection A,
30 paragraph ~~5- 6~~, unless payment of any outstanding civil penalty is tendered.

31 F. ~~Notwithstanding any other provisions in this chapter,~~ If a
32 RESIDENTIAL contractor's license has been revoked, ~~or has been~~ suspended OR
33 PLACED ON DISCIPLINARY PROBATION as a result of ~~an order to remedy~~ a
34 violation of this chapter, ~~and the contractor refuses or is unable to comply~~
35 ~~with the order of the registrar to remedy the violation,~~ the registrar may
36 order payment WITHIN THE LIMITATIONS PRESCRIBED IN ARTICLE 2.1 OF THIS
37 CHAPTER from the residential contractors' recovery fund to ~~remedy the~~
38 COMPENSATE AN ELIGIBLE CLAIMANT FOR ACTUAL DAMAGES CAUSED BY A RESIDENTIAL
39 CONTRACTOR'S violation. The registrar shall serve the contractor with a
40 notice setting forth the amount claimed or to be awarded. If the contractor
41 contests the amount or propriety of the payment, the contractor shall respond
42 within ten days of the date of service by requesting a hearing to determine
43 the amount or propriety of the payment. Failure by the contractor to respond
44 in writing within ten days of the date of service shall be deemed a waiver by
45 the contractor of the right to contest the amount claimed or to be awarded.

1 Service may be made by personal service to the contractor or by mailing a
2 copy of the notice by registered OR CERTIFIED mail with postage prepaid to
3 the contractor's latest address of record on file in the registrar's office.
4 If service is made by registered OR CERTIFIED mail, it is effective five days
5 after the notice is mailed. Except as provided in section 41-1092.08,
6 subsection H, the contractor or injured person may seek judicial review of
7 the registrar's final award pursuant to title 12, chapter 7, article 6.

8 Sec. 8. Section 32-1165, Arizona Revised Statutes, is amended to read:
9 32-1165. Advertising; effect of; classification

10 Except as authorized by section 32-1121, subsection A, paragraph ~~14~~ 13,
11 subdivision (c), it is a class 1 misdemeanor for any person to advertise that
12 ~~he~~ THE PERSON is able to perform any service or contract for compensation
13 subject to regulation by the registrar under the terms of this chapter unless
14 a license under the terms of this chapter is first obtained regardless of
15 whether ~~his~~ THE PERSON'S operations as a contractor are otherwise exempt.